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May 12, 2011

Via Electronic Filing

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423

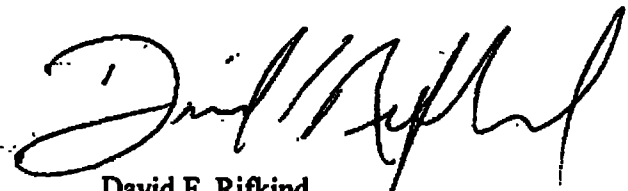
229508

Re: STB Finance Docket No. 35504, Petition of Union Pacific Railroad
Company for a Declaratory Order

Dear Mr. Brown:

Enclosed for electronic filing in the above-referenced matter is Canadian Pacific Railway
Company's Statement in Support of Petition.

Sincerely,



David F. Rifkind

Enclosure

ENTERED
Office of Proceedings

MAY 13 2011

cc: Parties of Record

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Part of
Public Record

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 35504

**PETITION OF UNION PACIFIC RAILROAD COMPANY
FOR A DECLARATORY ORDER**

**CANADIAN PACIFIC RAILWAY COMPANY'S
STATEMENT IN SUPPORT OF PETITION**

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Attorneys for Canadian Pacific Railway Company

Dated: May 12, 2011

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 35504

**PETITION OF UNION PACIFIC RAILROAD COMPANY
FOR A DECLARATORY ORDER**

**CANADIAN PACIFIC RAILWAY COMPANY STATEMENT
IN SUPPORT OF PETITION**

Canadian Pacific Railway Company and its U.S. rail carrier affiliates, Soo Line Railroad Company; Dakota, Minnesota & Eastern Railroad Corporation; and Delaware and Hudson Railway Company, Inc. (collectively, "CP") submit this statement in support of Union Pacific Railroad Company's ("UP") request that the Board institute a declaratory order proceeding with respect to the allocation of liability set forth in UP's tariff provisions applicable to rail transportation of Toxic by Inhalation Hazard ("TIH") commodities. *Petition of Union Pacific Railroad Company for a Declaratory Order* (filed April 27, 2011) ("Petition"). The Petition "asks the Board to declare that UP may require, as a condition of providing common carrier transportation services, that a TIH shipper indemnify and hold harmless UP against liabilities arising out of the performance of the transportation services, *except* those liabilities caused by the sole, contributory, or concurring negligence or fault of UP." Petition at 1. This declaration would provide much needed guidance to the rail industry and to TIH shippers. Accordingly, CP strongly supports UP's request that the Board institute a proceeding and establish a procedural schedule for receiving comments from interested persons.

CP, and other rail carriers, face similar issues to those raised by UP's Petition. Pursuant to its statutory common carrier obligation, CP regularly moves hazardous materials, including TIH, on its lines. The vast majority of such rail movements occur without incident. Nevertheless, each TIH rail movement exposes CP to the risk of potentially ruinous liability – a risk that stems from the inherently and extraordinarily dangerous nature of the commodity. Like UP and other rail carriers, CP has taken steps to limit or mitigate that risk. Significantly, those steps include conditions of common carriage that are similar to the conditions at issue in this proceeding. These conditions have been a source of friction between CP and some of its TIH shippers, notwithstanding the fact that such conditions are entirely reasonable.¹

Indeed, it would seem beyond question that a rail carrier should not bear the risk of catastrophic liabilities that are due to forces outside the carrier's control and the unique nature of TIH cargo. That risk should be allocated in the first instance to the shipper demanding that the carrier transport TIH cargo. While the common carrier obligation requires a rail carrier to provide rail transportation service for TIH shipments, it does not also require that a rail carrier become the insurer for all TIH-related risks while such shipments are in the carrier's possession.

The importance of the issues raised by UP's petition to the rail industry and to TIH shippers is underscored by the fact that in the last three years, the Board commenced two separate proceedings to address allocation of the risk of catastrophic liability associated with the shipment of TIH cargo. *See Common Carrier Obligation of Railroads – Transportation of Hazardous Materials*, STB Ex Parte No. 677 (Sub-No. 1), slip op. at 3 (served June 4, 2008); and *Establishment of the Toxic Inhalation Hazard Common Carrier Transportation Advisory Committee*, STB Ex Parte No. 698 (served August 3, 2010). However, the Board recently discontinued both proceedings without addressing the substance of the

¹ Pursuant to 49 U.S.C. § 10702, carriers may establish reasonable rules and practices for rail transportation services.

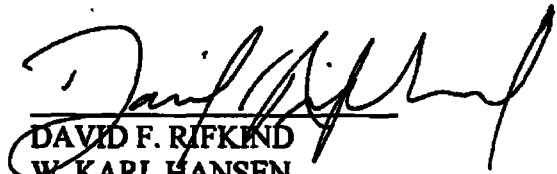
issues. STB Ex Parte No. 677 (Sub-No. 1) (served April 15, 2011). In terminating the proceedings, the Board stated it would not issue a general policy statement in the abstract, but would proceed according to its usual practice of resolving on a case-by-case basis actual disputes concerning the reasonableness of service terms governing rail common carrier transportation of TIH materials. *Id.* at 4 n.8. UP has presented just such a case, and the Board should institute the requested declaratory order proceeding to resolve the issues of industry-wide importance that UP's petition raises.

CONCLUSION

For the reasons stated above, CP respectfully requests that the Board institute a declaratory order proceeding in this matter, establish a procedural schedule for receiving comments from interested parties, and grant UP's request for a declaratory order.

Respectfully submitted,

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Dated: May 12, 2011

CERTIFICATE OF SERVICE

I, David F. Rifkind, certify that on this date a copy of Canadian Pacific Railway Company's Statement in Support of Petition in Finance Docket No. 35504, filed on May 12, 2011, was served by email and first-class mail, postage prepaid, on:

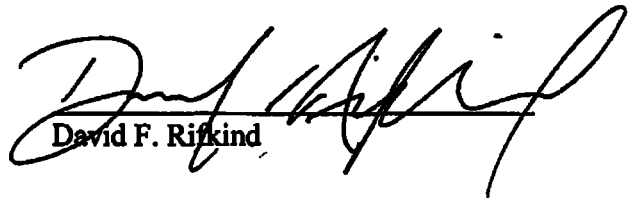
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Dated: May 12, 2011